

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: Nimrod Megiddo

Serial No.: 09/634,546

Group Art Unit: 3621

Filed: 8/08/2000

Examiner: Pierre Elisca

Title: *System for Enhancing Buyers Performance in Electronic Commerce*

**REPLY BRIEF**

Attn: Board of Patent Appeals and Interferences  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

In response to the Appeal Brief filed 12/10/2007, and the Examiner's Answers dated 5/15/2008 and 5/29/2008, Applicants submit the following reply.

### **REMARKS**

This Reply Brief is in response to the Examiner's Answers dated 5/15/2008 and 5/29/2008. Reconsideration of this application is respectfully requested in view of the foregoing remarks. In addition, all of the arguments in the appeal brief of 12/10/2007 and prior responses should also be considered in support of the claimed elements provided in the present invention.

### **STATUS OF CLAIMS**

Claims 1, 3-16, 21 and 23-28 are pending.

Claims 2, 17-20 and 22 were previously canceled.

Claims 1, 3-16, 21 and 23-28 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Togher et al. (USPA 2005/0228748) in view of Rosser (US 6,446,261).

### **RESPONSE TO EXAMINER'S ANSWER**

Applicants wish to note that Applicants received **two Examiner's responses** – a first one dated 05/15/2008 and a second one dated 05/29/2008. Applicants are unable to find any statement in the latest response by the Examiner with regards to why a second Examiner's response was issued. It should be noted that the Applicants' Reply Brief is based on the latest Examiner's response dated 05/29/2008.

In the 'Response to Arguments' section on pages 10-11 of the Examiner's Answer, the Examiner states that "Applicant further argues that the Office Action summary of the Office Action of 11/02/2006 indicates that claims 1, 3-16, and 23-28 are pending in the application, but **omits** to mention pending claim 21." Applicants wish to respectfully note that the Appeal Brief specifically identified a few discrepancies with regards to claim 21. First, Applicants

specifically asserted that the Final Office Action failed to mention the status of each pending claim as per MPEP 707.07(i). The Examiner's summary statement from the Final Office Action of 07/06/2007 is provided verbatim below:

2. Claims 1, 3-16 and 23-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Togher et al (U.S. PG Pub No. 2005/0228748) in view of Rosser (U.S. Patent No. 6,446,261).

It is clearly seen that the Examiner's summary statement is lacking any reference to claim 21. Further, it should also be noted that this discrepancy was pointed out in Applicants' response submitted prior to the Final Office action, but was never corrected over the last two office actions. The Examiner appears to have corrected this statement in the recent 'Examiner's Answer', without officially noting that such a correction was made. Applicants wished that the Examiner had clarified this point before when Applicants repeatedly sought clarification in at least two previous responses. Further, another specific issue raised in Applicants' Appeal Brief with respect to claim 21's rejection in the Final Office Action of 07/06/2007. The rejection of claim 21 from the Final Office Action of 07/06/2007 is reproduced below:

18. As per claims 21, Togher et al teach a method for enhancing buyers performance in electronic ecommerce comprising surveying quoted prices located across a network, comprising requesting price quotes using the fictitious names building reputation of the fictitious names as sophisticated buyer, and computing a quote a known buyer receives to what has been observed in

the system by the sophisticated buyer, continuously screening commercial sites on a network using the sophisticated buyers to retrieve product price information including at least quotes generating statistical distribution of the quotes (*see abstract, paragraphs 0003, 0006-0009, 0034, 0039, 0043*). Togher et al fail to teach a system of generating fictitious user names. However, Rosser teach a system of generating fictitious user names (*see abstract, column 4 line 15-line 48, 8 line 39-55*). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Togher to include Foth et teach a system of generating fictitious user names because this would have provided an interactive and automated systems and methods for conducting financial transactions and related financial information in capital markets without knowledge of who the customer (user) is.

It can be seen from the above-reproduced citation of the Examiner, that reference is made to “**Foth**”, a reference from a previous office action. The Appeal Brief specifically mentioned that Applicants have been seeking clarification regarding this issue from the Examiner to ensure that Foth was not being relied on. The Examiner, in the recent ‘Examiner’s Answer’, appears to have corrected this ambiguous language (without officially noting that such a correction was made) by replacing Foth with Rosser. Applicants wished that the Examiner had clarified this point before when Applicants repeatedly sought clarification in at least two previous responses.

With respect to the argument that one of ordinary skill in the art would be able to combine the teachings of Rosser and Togher, the Examiner states that the references are combinable because “**they are in the same environment**”. Applicants are unsure what standard the Examiner is using to determine if the references are combinable. Specifically, as mentioned in the Appeal Brief, the Rosser reference deals with insertion of ads into video broadcasts, while the Togher reference deals with an anonymous trading system. These are two disparate fields as evidenced by their classification in different classes/subclasses. The Togher reference is classified under **class 705**, which deals with Data Processing: Financial, Business Practice,

Management, Or Cost/Price Determination, and **subclass 37**, which deals in **Trading, matching, or bidding**. The Rosser reference, by contrast, is classified under **class 725**, which deals with **Interactive Video Distribution Systems**, and **subclass 34**, which deals with “commercial insertion” that is **“Specific to individual user or household”**.

Even if one were to assume for argument sakes that the Examiner’s arguments are correct, Applicants assert that the teachings of Togher and Rosser would not be combinable as they are in disparate fields. Applicants are unsure how one of ordinary skill in the art would have concluded that “they are in the same environment” when they are clearly classified in two separate classes due to their different focuses.

Applicants’ Appeal Brief also specifically addressed the fact that there is no teaching or suggestion in Togher for **automated surveyors** for surveying a plurality of: posted prices, bid prices, posted quotes, quoted prices, and auctions. Specifically, the centralized bid distributions system merely facilitates the anonymous arbitration of bids and offers between existing parties, such as WSA1a1 and WSA1b1. However, there is no teaching or suggestion for the centralized bid distribution system or a component of such a system to act as an automated surveyor for surveying posted prices, bid prices, posted quotes, quoted prices, and auctions. The Examiner, in the ‘Response to Argument’ section has once again failed to respond to this argument.

With respect to Applicants assertion that the neither Togher nor Rosser teaches the feature of an **“anonymous buver profile”**, the Examiner on page 11 of the Examiner’s Answer repeats the same citation that was used previously (i.e., Abstract, column 4, lines 15-48 and column 8, lines 39-55) and states that they teach such a feature. However, it was specifically

pointed out that the “anonymous” feature of Rosser merely deals with the “**anonymous targeted insertion**” and makes no mention of an “anonymous buyer profile” that is “**used multiple times to develop historical usage thereof, the historical usage representing a sophisticated buyer**”.

The Examiner has failed to specifically address what element or feature in Rosser teaches such an anonymous buyer profile that is repeatedly used, wherein the history of usage represents a sophisticated buyer.

The Board of Patent Appeals and Interferences is respectfully urged to review the arguments presented in the Appeal Brief as it addresses, in detail, the failure of Togher and Rosser references to teach many of the features of the rejected claims.

Hence, at least for the reasons set forth in the current Reply Brief and the previously filed Appeal Brief, Applicants maintain that the Examiner issued an improper 35 U.S.C. §103(a) rejection with regards to independent claims 1, 12, 21, and 27 and dependent claims 3-11, 13-16, 23-26 and 28.

**SUMMARY**

None of the references, cited or applied, provide for the specific claimed details of applicants' presently claimed invention, nor renders them obvious. It is believed that this case is in condition for allowance and reconsideration thereof and early issuance is respectfully requested.

As this Reply Brief has been timely filed within the set period of response, no petition for extension of time or associated fee is required. However, the Commissioner is hereby authorized to charge any deficiencies in the fees provided to Deposit Account No. 09-0441.

Respectfully submitted,

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